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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,028	04/15/2004	Steven V. Jones	BR8843	7480
28268 7590 05/03/2007 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			EXAMINER SHARP, JEFFREY ANDREW	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/825,028

Applicant(s)

JONES ET AL.

Examiner

Jeffrey Sharp

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

[1] This action is responsive to Applicant's remarks/amendment filed on 24 April 2007 with regard to the Official Office action mailed on 24 January 2007.

#### ***Status of Claims***

[2] Claims 1-10, 12, and 19-21 are pending.

#### ***Claim Objections***

[3] Claim 2 was previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 24 April 2007. Accordingly, the objection to claim 2 has been withdrawn.

#### ***New Grounds of Rejection***

#### ***Claim Rejections - 35 USC § 102***

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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[5] Claims 1-4, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Scharres US-4,949,450.

In short, and when the claims are given their broadest reasonable interpretation, Scharres generally discloses the invention as claimed, teaching a blind fastener having a mandrel (24c) and monolithic cylindrical body comprising a radially enlarged flange (22c) and two different diameter portions, a larger diameter adjacent said flange (21c), and a smaller diameter portion at the tail end, and a shoulder (shown as a chamfer) therebetween, said mandrel having a head (25c) in operative engagement with the tail end, and a cylindrical resilient sleeve (30c) made of plastic or the like completely surrounding the larger diameter portion adjacent said flange, and also may define an inner surface which is in uninterrupted contact with and covers the entire larger diameter portion between the workpiece and the flange. The flange diameter is at least 1.4 times greater than the smaller diameter portion. A portion (36) remains exposed to act as a stop surface as an intended use, and a portion (30c) of the sleeve has an external diameter less than the flange (22c) of the body (20c)

The examiner notes that "shoulder" is a broad limitation. Claim 5 limits this definition in a way that Scharres does not anticipate.

### ***Claim Rejections - 35 USC § 103***

[6] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[7] Claims 1, 2, 4-10, 12, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kabureck US-918,060 in view of Cook US-3,687,409.

In short, and when the claims are given their broadest reasonable interpretation, Kabureck generally discloses the invention as claimed, teaching a blind fastener having a pre-formed radially enlarged flange (c4), a first portion (a) having a greater diameter than a second portion (a2) so as to form a shoulder (a6) that runs perpendicular to the axis to prevent over-insertion, said blind fastener further being inserted into a hole of a panel (b), wherein the entire first portion (a) is covered by a sleeve of resilient material, said sleeve being generally cylindrical and being exposed on its outer surface to act as a stop by a carrier member or the like (e.g., door, window, etc...). Kabureck broadly discloses in claim 3, "a means for securing", and further states in claim 4 "a screw or equivalent".

However, Kabureck fails to disclose the blind fastener having a "mandrel" having a "head", and "monolithic cylindrical body" (commonly referred to in the art as a "rivet").

Cook discloses that it is well-known in the art to substitute a screw with a rivet, and is generally considered an art-recognized equivalent thereof. Cook states that "screw-like fastener is intended to cover any equivalent such as a "rivet" or the like, even though the common machine screw as shown in Figure 3 is generally used" (column 4 lines 54-57).

Therefore, at the time of invention, it would have been obvious to one having an ordinary skill in the art, to modify the blind fastener taught by Kabureck, to comprise a mandrel having a head and monolithic cylindrical body, as it is well-known in the art to replace a screw with a rivet.

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As for the material of the cylindrical sleeve, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It is also common knowledge to choose a material that has sufficient strength, durability, flexibility, hardness, etc. for the application and intended use of that material. In the instant case, silicone would be an obvious material for dampening.

As for claim 21, a door would suffice as a broadly claimed "carrier member", said carrier member carrying a doorknob, and movable between a first and second position to contact the sleeve.

[8] Claims 3, 6-8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scharres US-4,949,450.

In short, and when the claims are given their broadest reasonable interpretation, Scharres generally discloses the invention as claimed, as discussed above, but is silent as to the exact location of the shoulder relative to the body, and also appears to be silent as to the exact durometer and does not mention "rubber" as a material.

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Therefore, at the time of invention, it would have been obvious to one of ordinary

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skill in the art, to modify the location of the shoulder for optimum lead-in, or (inherently) by increasing or decreasing the length of the fastener for use with panels of varying thickness.

Moreover, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It is also common knowledge to choose a material that has sufficient strength, durability, flexibility, hardness, etc. for the application and intended use of that material. In the instant case, Scharres broadly suggests a "sound", "thermal", and "electrical" "insulating" material. Examiner takes official notice that rubber is a material known for its sound and electrical insulation properties, and those of ordinary skill in the art would look to rubber as an art-recognized equivalent to insulating plastic. Therefore, at the time of invention, it would have been obvious to those of ordinary skill in the art to modify the material of the cylindrical sleeve taught by Scharres, to include rubber and durometers between 60 and 70 Shore A, as a matter of design choice.

### ***Conclusion***

[9] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows: See form PTO-892.

**York US-3,300,798**

**Tremblay US-5,345,734**


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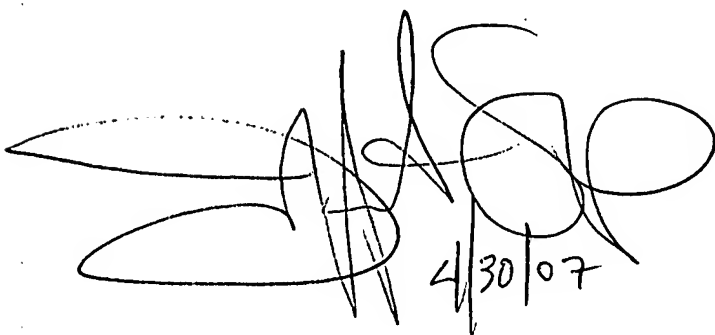
[10] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sharp whose telephone number is (571) 272-7074. The examiner can normally be reached 7:00 am - 5:30 pm Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAS

  
ROBERT J. SANDY  
PRIMARY EXAMINER

  
4/30/07